

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JUL -9 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JOBB LUIS ORNELAS,

Appellant.

)
)
) 2 CA-CR 2007-0339
) DEPARTMENT B
)

MEMORANDUM DECISION

) Not for Publication
) Rule 111, Rules of
) the Supreme Court
)
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20070933

Honorable Richard Nichols, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery

Tucson
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E C K E R S T R O M, Presiding Judge.

¶1 Appellant Jobb Luis Ornelas was tried in absentia and found guilty by a jury of theft of a means of transportation. The trial court sentenced him to an enhanced, presumptive prison term of 11.25 years. On appeal, Ornelas argues his conviction should be vacated because the court erroneously admitted in evidence his own statement that he had been allowed to use the vehicle in exchange for illegal drugs. We affirm for the reasons set forth below.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to sustaining the jury's verdict, and we will resolve all reasonable inferences from the evidence against the defendant. *State v. Cox*, 214 Ariz. 518, ¶ 2, 155 P.3d 357, 358 (App. 2007), *aff'd*, 217 Ariz. 353, 174 P.3d 265 (2007).

¶3 The owner of a truck discovered it missing from his driveway one morning as he prepared to leave for work. Later that day, following a tip from a friend who had spotted the truck, the owner saw Ornelas driving it and summoned the police. When officers arrived to investigate, they found the truck's windows had been broken and its steering column and ignition mechanism had been damaged. Ornelas did not have keys to the truck but told police a person named "Frankie" had loaned it to him and told him how to start it without a key. Ornelas could provide no other details identifying Frankie. Ornelas also maintained that he had rented the truck "for a few hours" in exchange for forty dollars' worth of crack cocaine. Before trial, the court ruled the comment regarding the cocaine was admissible because it "involve[d] an integral part of the State's case."

Discussion

¶4 Ornelas characterizes evidence of the drug transaction as “other-act evidence ha[ving] little or no legitimate probative value.” He claims that, but for this reference to cocaine, “the jury might well have doubted that Ornelas was anything more than an unwitting possessor of a stolen vehicle.”

¶5 “We review evidentiary rulings for abuse of discretion.” *State v. Garza*, 216 Ariz. 56, ¶ 37, 163 P.3d 1006, 1016 (2007). We will not disturb a conviction, however, if an incorrect evidentiary ruling constitutes “harmless error.” *State v. Beasley*, 205 Ariz. 334, ¶ 27, 70 P.3d 463, 469 (App. 2003). An error is harmless if a reviewing court can determine, “beyond a reasonable doubt, that the error did not contribute to or affect the verdict.” *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993). A court may find harmless error when there is overwhelming other evidence of a defendant’s guilt. *See, e.g., State v. Davolt*, 207 Ariz. 191, ¶ 64, 84 P.3d 456, 474 (2004).

¶6 Theft of a means of transportation occurs if, without lawful authority, a person knowingly controls another person’s vehicle while knowing or having reason to know it is stolen. A.R.S. § 13-1814(A)(5). Knowledge that property was stolen may be inferred from a defendant’s possession of recently stolen property without a satisfactory explanation. A.R.S. § 13-2305(1); § 13-1814(B); *see State v. Mohr*, 150 Ariz. 564, 568, 724 P.2d 1233, 1237 (App. 1986).

¶7 Assuming *arguendo* that the trial court erred in admitting Ornelas’s statement about the cocaine, we nevertheless find any such error to be harmless. As noted above, the

broken windows, damaged steering column, and missing keys were obvious indicia of theft, and Ornelas admitted he was aware of the damage. Thus, even had the jury somehow credited Ornelas's questionable claims that he had rented the vehicle and had not stolen it himself, the state presented overwhelming evidence that Ornelas knew or had reason to know that he had been controlling property that had been stolen by another. *See* § 13-1814(A)(5). Indeed, the nature of the alleged transaction between Ornelas and "Frankie" would itself have placed any reasonable person on notice that the truck did not belong to "Frankie." According to Ornelas, the "rental" transaction occurred between virtual strangers, without collateral, and with the lessor instructing Ornelas about how to drive the vehicle without a key. Given the overwhelming admissible evidence showing Ornelas knew or should have known the truck was stolen, any error in admitting the challenged evidence was harmless beyond a reasonable doubt.

¶8 We therefore affirm Ornelas's conviction and sentence.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge